



STORAGE NAME: h0697a.CVJS

DATE: 2/17/2012

February 15, 2012

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 697 – Representative McBurney
Relief/Don Brown/District School Board of Sumter County

THIS IS A CONTESTED CLAIM FOR \$2,583,049.95 BASED ON A JURY VERDICT AGAINST THE DISTRICT SCHOOL BOARD OF SUMTER COUNTY, IN WHICH THE JURY DETERMINED THAT THE SCHOOL BOARD WAS 100 PERCENT RESPONSIBLE FOR INJURIES SUSTAINED BY DON BROWN DUE TO THE NEGLIGENT OPERATION OF A SCHOOL BUS BY ONE OF ITS EMPLOYEES.

FINDING OF FACT:

On October 18, 2004, at approximately 6:45 a.m., Donald Brown was driving his Harley-Davidson motorcycle heading to work at the Federal Bureau of Prisons in Coleman, Florida. Mr. Brown was driving eastbound on County Road 470 and was approaching the intersection with County Road 475 in Bushnell, Florida. Patsy C. Foxworth was operating a school bus, owned by the District School Board of Sumter County (School Board), heading north on County Road 475 in Bushnell, Florida. The school bus came to a stop at the meeting point of County Road 475 (its terminus) with County Road 470. After stopping at the stop sign, in an attempt to make a left turn and head west on County Road 470, Ms. Foxworth pulled in front of Mr. Brown causing a collision with his motorcycle.

Upon the impact with the bus, Mr. Brown sustained serious

injuries and his leg was severed below the knee. Mr. Brown was airlifted to Orlando Regional Medical Center where he was taken to surgery to complete a below-the-knee amputation of his right leg. Mr. Brown was hospitalized from October 18, 2004, to October 27, 2004, and underwent additional surgeries on October 25, 2004, and October 28, 2004, to care for the wound and to do skin grafts from his left thigh.

Mr. Brown was transferred to Shands Hospital in Gainesville, Florida, for rehabilitation from November 2, 2004, to November 12, 2004. As a result of the injuries, Mr. Brown required the use of a prosthetic leg, which resulted in ulcers requiring additional surgery on January 17, 2006.

Mr. Brown incurred medical expenses in the amount of \$421,693.60 and medically retired from his federal employment at the Federal Bureau of Prisons where his salary was \$42,000 a year. Prior to the accident, Mr. Brown lived a full life and was very active in recreational, social, and sporting activities.

Mr. Brown is receiving continuous medical care for his injuries, including two surgeries after the trial, the first surgery occurring on September 16 and 17, 2009, at Orlando Regional Medical Center due to a bone infection on his right leg, and the second surgery occurring on August 27, 2010, at the Jewish Hospital in Louisville, Kentucky, due to complications with his right leg resulting in an above-the-knee amputation.

The School Board argued that Mr. Brown was at fault for the accident – that he was tailgating the car in front of him and swerved around that car. However, the greater weight of the evidence supports the jury's finding that Ms. Foxworth was 100 percent at fault for the accident. Ms. Foxworth was cited for running the stop sign and pled guilty to the charge.

Litigation History: A lawsuit was brought against the School Board by Mr. Brown. After a jury trial, the jury found the School Board liable for Mr. Brown's injuries and awarded him damages in the amount of \$2,941,383:

\$421,963 for past medical bills;
\$92,690 for past lost wages;
\$972,730 for future medical bills;
\$554,000 for future loss of earning capacity;
\$630,000 for past pain and suffering; and
\$270,000 for future pain and suffering.

A final judgment on March 2, 2009, reduced the final verdict to \$2,651,375.83 (reductions were made for set-offs related to actual medical bills and disability payments), plus taxable costs in the amount of \$31,674.12. The School Board appealed the judgment on March 30, 2009, which was affirmed by the Fifth District Court of Appeal on February 18, 2011. The School

Board has paid \$100,000 in accordance with the statutory limits of liability in s. 768.28, Florida Statutes.

CONCLUSION OF LAW:

Like any motorist, Ms. Foxworth had a duty to operate her vehicle with consideration for the safety of other drivers.¹ By pulling in front of Mr. Brown, Ms. Foxworth breached her duty of care, which was a direct and proximate cause of Mr. Brown's injuries. The School Board, as Ms. Foxworth's employer, is liable for her negligent act.²

As discussed above, the jury determined that Ms. Foxworth, based upon the negligent operation of her vehicle, was 100 percent at fault in this accident. This conclusion is supported by the greater weight of the evidence and is affirmed by the undersigned.

The School Board argued that the damages awarded were too high. While, in hindsight, the jury's award may be questioned as being too high on lost future wages, it can also be said that the jury underestimated future medical expenses and pain and suffering. The jury did not foresee the additional surgeries Mr. Brown would undergo and the increased related suffering. It also appears the jury underestimated the amount of pain and suffering resulting from the loss of his leg – only awarding \$270,000 for related pain and suffering going forward for a lifetime of the loss of his leg and the related pain and medical treatment resulting from that loss. The undersigned concludes that the damages awarded by the jury are appropriate and are affirmed.

The School Board argued that the injuries in this case do not rise to the level of passing a claim bill. It argued that while death, paralysis, or brain injury could justify a passage of a claim bill, that the injuries suffered by Mr. Brown, including the loss of his leg, do not rise to that level. I can find no support for this argument and find that his injuries are significant and consistent with those of prior claim bills passed by the Legislature.

Finally, the School Board argued that the underlying negligence in this matter does not rise to the level to support passage of a claim bill. It argued that the negligence in this case is only simple negligence and that something greater should be

¹ *Pedigo v. Smith*, 395 So.2d 615, 616 (Fla. 5th DCA 1981).

² *Mercury Motors Express v. Smith*, 393 So.2d 545, 549 (Fla. 1981)(holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); *see also Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000)(holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another"). Also, *see* s. 768.28(9)(a), F.S., which provides that "[t]he exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity... of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."

required to justify the passage of a claim bill. I can find no support for this argument and find that the negligence in this matter is consistent with that of prior claim bills passed by the Legislature.

Prior Legislative History: This is the first year this claim has been filed.

Source of funds: The School Board has liability insurance with Preferred Governmental Insurance Trust that will pay \$900,000 of the award under this claim should it be passed.

ATTORNEY'S/
LOBBYING FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees and costs are included with the attorney's fees.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that House Bill 697 be reported FAVORABLY.

Respectfully submitted,

TOM THOMAS
Special Master

cc: Representative McBurney, House Sponsor
Senator Garcia, Senate Sponsor
Judge Jessica E. Varn, Senate Special Master